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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/683,830	10/10/2003	Golam Faruque Khan	AA605M2	2986

27752 7590 06/21/2005

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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EXAMINER

VANIK, DAVID L

ART UNIT PAPER NUMBER

1615

DATE MAILED: 06/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/683,830

Applicant(s)

KHAN, GOLAM FARUQUE

Examiner

David L. Vanik

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 18-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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DETAILED ACTION

Receipt is acknowledged of the applicant's Information Disclosure Statement filed on 6/17/2004.

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-16, 18-20, drawn to a hair conditioning composition, classified in class 424, subclass 70.28.
 - II. Claim 17, drawn to a method of conditioning the hair, classified in class 424, subclass 70.1.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the product can be used in a materially different manner. The product as claimed can be used as a cosmetic composition, such as a skin care composition.

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3. Searching the inventions of Groups I – II together would impose a search burden on the examiner. In the instant case, the search of a product and method of using said product would impose a search burden on the examiner.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. Because these inventions are distinct for the reasons given above and the search required for each subset of Groups I – II are not required for one another, restriction for examination purposes as indicated is proper.

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

7. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

8. **In the event that applicant elects Group I, the following election of species is required.** This application contains claims directed to the following patentably distinct species of thickening polymers:

- (a) nonionic thickening polymer
- (b) cationic thickening polymer

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1 and 18 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

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the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

9. During a telephone conversation with Linda Sivik on 6/16/2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-16, 18-20. The "nonionic thickening" polymer species was also chosen. Affirmation of this election must be made by applicant in replying to this Office action. Claim 17 is withdrawn from further consideration by the examiner as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-16, 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,843,418 ('418).

'418 disclose a rinse off hair care compositions comprising the following: (1) from about 0.1% to about 10% by weight of a nonionic thickening polymer (column 4, lines 1-19, abstract, and Claim 1), (2) from about 0.1% to about 10% by weight of an unsaturated quaternary ammonium surfactant (column 4, lines 20-21, abstract, and Claim 1), (3) an aqueous carrier, such as water (See Example 1, column 28, line 19-48).

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Like the instant composition, the hair care formulation advanced by '418 is substantially free of fatty alcohol materials, such as stearyl alcohol, and can be substantially free of anionic compounds (column 11, line 57 – column 12, line 2 and Example 1). According to '418, the composition can comprise a guar gum polymer and the cationic surfactant can be a mono-alkyl trimethyl ammonium salt having a chain from 16 to 22 carbon atoms (column 7, line 63 – column 9, line 27).

The composition advanced by '418 can further comprise at least about 0.1% of a water-soluble silicone compound (Claim 25, column 14, line 27 – column 16, line 53, and column 21, line 37 – column 22, line 56). Specific types of silicone materials useful in the invention set forth by '418 include amodimethicone (column 14, lines 26-43). Humectants, such as polyethylene glycol, may also be included in the composition (column 10, lines 4-5).

It is the examiner's position that, inherently, the composition advanced by '418 is transparent and has a viscosity from about 2,000 to about 50,000mPa/s. Since the essential elements of the '418 composition are identical to the instant compositions (that is, (1) from about 0.1% to about 10% by weight of a nonionic thickening polymer, (2) from about 0.1% to about 10% by weight of an unsaturated quaternary ammonium surfactant, and (3) an aqueous carrier, such as water), the composition would inherently have the same physiochemical properties as the compositions set forth in the instant application. As such, it is the examiner's position that the composition advanced by '418 anticipates the compositions enumerated in the instant claim set.

The claims are therefore anticipated by US Patent 5,843,418 ('418).

Claims 1-3, 7-9, 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4,859,456 ('456) as evidenced by US Patent 4,342,744 ('744).

'456 disclose a hair rinse conditioning composition comprising the following: 1) about 0.5-15% by weight of a PVP/VA copolymer, 2) 0.1-10% a cationic quaternary ammonium compound, 3) 0.1-4% of a nonionic cellulose polymer, and 4) an aqueous carrier, such as water (abstract and Claim 1). As evidenced by '744, PVP/VA can be considered a nonionic polymer (column 2, lines 23-33). Compositions advanced by '456 appear to be substantially free of a water-insoluble high melting point oily compound as well as anionic compounds (See Example 1, column 8, lines 21-40). The viscosity of the final product may range from 50 – 20,000 centipose (column 7, lines 16-31).

It is the examiner's position that, inherently, the composition advanced by '456 is transparent. Since the essential elements of the '456 composition are identical to the instant compositions (that is, (1) about 0.5-15% by weight of a PVP/VA copolymer, 2) 0.1-10% a cationic quaternary ammonium compound, 3) 0.1-4% of a nonionic cellulose polymer, and 4) an aqueous carrier, such as water), the composition would inherently have the same physiochemical properties as the compositions set forth in the instant application. As such, it is the examiner's position that the composition advanced by '418 anticipates the compositions enumerated in the instant claim set.

The claims are therefore anticipated by US Patent 4,859,456 ('456).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. EP 0412705 A2 is cited as patents of interest in its disclosure of a hair care composition comprising (1) a nonionic polymer, a quaternary ammonium-containing cationic surfactant material, (3) an aqueous carrier, and (4) a silicone compound.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Vanik whose telephone number is (571) 272-3104. The examiner can normally be reached on Monday-Friday 8:30 AM - 5:00 PM.

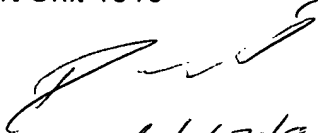
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carlos Azpuru, can be reached at (571) 272-0588. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

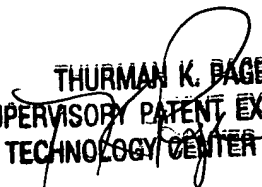
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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David Vanik, Ph.D.
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6/17/08


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